2020 LSBC 21
Decision issued: May 25, 2020
Citation issued: January 29, 2019

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

BROCK ANTHONY EDWARDS

RESPONDENT

DECISION OF THE HEARING PANEL ON FACTS AND DETERMINATION

Hearing dates:	January 24, 2020 March 10, 2020
Panel:	Craig A.B. Ferris, QC, Chair Laura Nashman, Public representative John D. Waddell, QC, Lawyer
Discipline Counsel:	Mandana Namazi
Counsel for the Respondent:	Joel A. Morris

BACKGROUND

The Citation

[1] A citation against Brock Anthony Edwards (the "Respondent") was authorized by the Discipline Committee on January 24, 2019 and issued on January 29, 2019 (the "Citation"). The Citation alleges that, in the course of representing himself in matrimonial proceedings before the Supreme Court of British Columbia, the Respondent acted in a manner that the court found frustrated or misused the court process, including by doing one or more of the following:

(a) paying costs to the Family Maintenance and Enforcement Program rather than to the opposing party or her counsel:

(i) contrary to the terms of a January 31, 2017 costs order;

(ii) to frustrate the opposing party; and

(iii) to increase the cost of litigation for the opposing party;

(b) drafting and forwarding a memo to the opposing party, in which he stated his intention to bring another application that he believed would result in the opposing party having to pay her lawyer more in fees than the sum of the January 31, 2017 costs order;

(c) filing two requisitions that were purportedly by consent, in circumstances where he knew or ought to have known that no such consent had been provided;

(d) threatening and instituting legal proceedings for an improper purpose; and

(e) using the court process as a means of harassing and intimidating the opposing party.

The application to adjourn the hearing on January 24, 2020

[2] On January 24, 2020, the Respondent applied to the Panel for an adjournment of the hearing scheduled for that same day on the following grounds:

(a) the Respondent's former counsel formally withdrew from the record at a prehearing conference on January 17, 2020, one week before the hearing date;

(b) the Respondent intended to apply to withdraw some or all of the admissions deemed to have been made, subject to reviewing that matter with his counsel; and

(c) the Respondent had retained new counsel and that counsel required sufficient time to review this matter, take instructions and prepare for a hearing of the Citation; without an adjournment, the Respondent would not be represented by counsel at the hearing of the Citation.

[3] The Law Society opposed the application on the basis that:

(a) the Respondent had not determined how counsel could assist him with this hearing, in light of the nature of the allegations in the Citation and the deemed admissions;

(b) the hearing was peremptory and the application disclosed no proper basis for an adjournment; and

(c) an adjournment on the facts of this case was contrary to the public interest in commencing hearings in a timely way.

[4] The Respondent was initially represented by Mr. Garen Arnet-Zargarian. On April 9, 2019, Mr. Arnet-Zargarian withdrew as counsel for the Respondent.

[5] On May 22, 2019, Mr. Wally Oppal, QC advised counsel for the Law Society that he had been retained as counsel for the Respondent in this matter. Between July 24, 2019 and September 12, 2019, attempts were made by Law Society counsel to schedule a prehearing conference. On September 12, 2019, a hearing date was set, by agreement, for December 3, 2019. Counsel for the Law Society advised Mr. Oppal that the Law Society would deliver a notice to admit and that the Respondent would have 21 days to respond.

[6] On September 13, 2019, a notice of hearing was served on Mr. Oppal in relation to the December 3, 2019 hearing date, and on October 6, 2019, Mr. Oppal was served with a notice to admit (the "NTA"). The Law Society stated in its covering letter that, if the Respondent did not reply to the NTA within the requisite 21 days, the Respondent would be deemed to admit the truth of the facts and the authenticity of the documents contained in the NTA.

[7] The Respondent never replied to the NTA, nor did he indicate at any time that he needed an extension of time to consider the NTA.

[8] On November 5, 2019, Mr. Oppal provided a written request to adjourn the December 3 hearing date.

[9] On November 8, 2019, a third prehearing conference took place. Law Society counsel advised the Respondent that, having not responded to the NTA within 21 days, the Respondent was deemed to admit the facts and documents referred to in the NTA. Further, Law Society counsel stated that, if the hearing was adjourned, it ought to be rescheduled as soon as possible and within the Federation of Law Societies Guidelines. The presiding Bencher advised Mr. Oppal that the deeming provision was in effect and asked him to expressly advise whether or not he intended to contest the NTA or apply to set it aside. Mr. Oppal replied that he did not anticipate any problems but that he needed a few days to speak with the Respondent. At the same time, Mr. Oppal indicated that he accepted the NTA and would not be contesting its contents. Based on these assurances, counsel for the Law Society did not oppose the adjournment request on the condition that the new

date would be before January 24, 2020 and would be peremptory on the Respondent.

[10] All of the documents referenced and contained within the NTA were previously disclosed to the Respondent on February 22, 2019.

[11] A new date for the hearing was scheduled for January 24, 2020.

[12] On January 9, 2020, after first leaving a voicemail message to this effect, Mr. Oppal wrote to the Law Society and enclosed a written notice of withdrawal as counsel for the Respondent.

[13] On January 17, 2020, a fourth prehearing conference was held. Mr. Oppal attended with the Respondent. The presiding Bencher permitted Mr. Oppal to withdraw as counsel but deferred the issue of an adjournment to the hearing panel. The Respondent advised for the first time that he was not making any admissions.

[14] On January 19, 2020, Mr. Joel Morris sent an email to the Law Society advising that he had been retained by the Respondent for the purposes of an adjournment application in relation to the January 24 hearing date. In his e-mail, Mr. Morris indicated that he was not retained for the hearing on January 24. He also indicated that the Respondent "requires an adjournment in order to allow time for new counsel to review this matter, take instructions, and prepare for a hearing of this citation. An adjournment is necessary for a fair hearing of the citation to avoid serious prejudice."

[15] Mr. Morris appeared with the Respondent at the commencement of the Hearing on January 24, 2020 and reiterated that, in order to be retained for any purpose beyond the application for an adjournment, he required an adjournment of the Hearing. He assured the Hearing Panel that, if an adjournment was granted, he would carry forward as counsel for the Respondent.

[16] Mr. Morris further advised the Hearing Panel that the Respondent intended to apply to withdraw some admissions deemed to have been made. He did not advise what admissions would be the subject of the withdrawal application. Mr. Morris requested a further prehearing conference because the outcome of such an application would affect the length of a future hearing.

[17] In opposing the application for an adjournment, counsel for the Law Society argued that the Respondent was aware of the withdrawal of his counsel in early January, 2020, yet he had made no efforts to find new counsel. Further, counsel argued that the Respondent had ample opportunity to object to the contents of the NTA and the

Respondent had not established that new counsel would have any impact on the outcome of the hearing. Counsel for the Law Society argued that, in all the circumstances, an adjournment of the Hearing would be contrary to the public interest.

[18] Following submissions by counsel, the Hearing Panel dismissed the adjournment application. Instead, it ordered that the Law Society would lead evidence to support its case as scheduled on January 24, 2020, but without closing its case. The Hearing would then be adjourned to allow the Respondent or his counsel to prepare an application, with or without further evidence, to be permitted to withdraw some or all of the facts and documents referred to in the NTA. The application materials were to be delivered to the Law Society and the Hearing Panel on or before February 21, 2020. The Hearing would then continue on March 10, 2020 for the hearing of the Respondent's application and possible further evidence.

[19] On the afternoon of January 24, 2020, the Law Society tendered its evidence in the form of the NTA and made submissions on the applicable law. The Hearing then adjourned to March 10, 2020.

The Respondent's challenge to the Notice to Admit

[20] Upon the resumption of the Hearing on March 10, 2020, counsel for the Respondent applied to withdraw certain admissions contained in the NTA.

[21] Specifically, the admissions of concern were found in paragraphs 47, 48, 60, 61, 80 to 85, 87, 96 and 103. While the challenges were specific to the content of each paragraph, the essential bases were that the contents of those paragraphs revealed a triable issue, that the facts deemed to be admitted were irrelevant to the allegations in the Citation and were prejudicial to the Respondent, that the withdrawal of the admissions would cause no prejudice to the Law Society, and that the withdrawal of the admissions was in the interest of justice.

[22] In support of the application to withdraw admissions, the Respondent offered his affidavit sworn February 21, 2020. In his affidavit, the Respondent asserted that he never had an opportunity to review the admissions in the NTA with Mr. Oppal. The balance of the affidavit challenged the evidence of his former spouse and her legal counsel in the matrimonial proceedings, which is contained in the NTA. Further, the Respondent argued that, as a matter of law, he ought to be permitted to have an opportunity to lead fresh, or compelling, evidence to contradict or lessen the weight given to those reasons.

[23] During submissions, counsel for the Law Society consented to the withdrawal of paragraph 103 of the NTA.

[24] Counsel for the Law Society opposed the Respondent's application and offered three "overarching" reasons why the Respondent's application should be dismissed.

[25] First, the Respondent had admitted in the NTA, and did not attempt to resile from it, that the British Columbia Supreme Court decision that is the subject of the Citation is admissible as *prima facie* proof of its contents. Therefore, the Respondent ought not to be permitted to rely upon his affidavit filed in relation to his application as it attempts to re-litigate those findings. In the circumstances, it was argued this would be an abuse of process.

[26] Further, to a great extent, the issues the Respondent had taken with the admissions he now wished to withdraw could be addressed in a manner at the hearing, through submissions as to the appropriate weight to be given to the admissions. It remained open to the Respondent to make those submissions, without resorting to calling so-called "fresh evidence" or resiling from admissions. In other words, holding the Respondent to the admissions did not mean he could not argue that certain admissions ought not to be given weight.

[27] Finally, and in any case, the Law Society submitted that the Respondent had failed to satisfy his burden, either on the facts or at law. With the exception of paragraph 103 of the NTA, the Respondent had not established a proper basis to withdraw the admissions.

[28] Counsel for the Law Society asked the Panel to consider that the hearing of the Citation had already been delayed several times. The Law Society's mandate requires that a hearing proceed in an expeditious manner in accordance with the effective regulation of the profession and the need to maintain the public's confidence in the ability of the Law Society to self-regulate.

[29] Further, the Law Society had relied upon the deemed admissions to prepare and commence its case. As the application to withdraw deemed admissions was only made at a very late stage, after substantial reliance by the Law Society on the deemed admissions, it would be prejudicial at this late stage to allow the application.

[30] Following the close of submissions regarding the application to withdraw the specified admissions, the Panel dismissed the Respondent's application. The Panel found that the Respondent's affidavit was vague on the circumstances surrounding the initial acceptance of the facts in the NTA. There was no clear assertion by the

Respondent that Mr. Oppal had acted without instructions in that acceptance. Above all else, there was no compelling evidence to support the withdrawal of the admissions deemed to have been made by the Respondent.

[31] In dismissing the Respondent's application, the Hearing Panel's ruling did not prevent the consideration of evidence that could affect the weight to be given to any of the admissions. The Panel determined that it would assess the evidence in its consideration of the merits of the Citation.

The Hearing

[32] Following the acceptance of the NTA, the Law Society closed its case, but for final submissions.

[33] Upon commencement of the Respondent's case, counsel for the Respondent advised that the Respondent would not call any evidence. Counsel admitted, on behalf of the Respondent, that the allegations in paragraphs 1(b), (c), (d) and (e) of the Citation constituted conduct unbecoming the profession, pursuant to section 38(4) of the *Legal Profession Act* (the "*Act*").

[34] Respondent's counsel then questioned whether the allegations in paragraph 1(a) of the Citation constituted a discipline violation of any sort. He indicated that he would argue that the Law Society had not met the onus of establishing the alleged conduct and would ask that the allegation be dismissed outright.

The Notice to Admit

[35] Rule 4-28 of the Law Society Rules provides that a party may request that the other party admit the truth of a fact or the authenticity of a document for the purposes of the hearing, if the request is made no less than 45 days before the hearing date. The Rule stipulates that the request must be made in writing, clearly marked "Notice to Admit" and served in accordance with Rule 10-1. Rule 4-28(10) further provides that a party who receives a request under the Rule must respond to it within 21 days, and if no response is provided within 21 days, the party is deemed to admit, for the purposes of the hearing, the truth of the facts and the authenticity of the documents set out in the request. As the Respondent did not respond to the NTA, it has been deemed admitted in its entirety pursuant to Rule 4-28(7).

[36] On October 16, 2019, the Respondent was served with the NTA, by courier, through his second counsel, Mr. Oppal, in accordance with Rule 4-28.

[37] The Law Society did not receive any reply to the NTA.

[38] Accordingly, the facts set out in the NTA are deemed proven facts, and the documents contained therein are deemed authentic documents, for the purposes of this Hearing.

Onus and standard of proof

[39] In Law Society discipline hearings, the onus of proof is on the Law Society to prove the allegations on a balance of probabilities.

[40] In *Law Society of BC v. Schauble*, 2009 LSBC 11, a hearing panel summarized the onus and standard of proof as follows:

> The onus of proof is on the Law Society, and the standard of proof is a balance of probabilities: "... evidence must be scrutinized with care" and "must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But … there is no objective standard to measure sufficiency." (*F.H. v. McDougall*, 2008 SCC 53, 297 DLR (4th) 193).

[41] In *Foo v. Law Society of BC*, 2017 BCCA 151, the Court of Appeal confirmed that the Law Society carries the burden of proof to establish on a balance of probabilities the facts that it alleges constitute professional misconduct.

Test for professional misconduct

[42] "Professional misconduct" is not a defined term in the *Act*, the Rules or the *Code of Professional Conduct for British Columbia* (the "*Code*").

[43] The test for whether conduct constitutes professional misconduct was defined in *Law Society of BC v. Martin*, 2005 LSBC 16, as "whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members."

[44] In *Martin*, the panel observed that a finding of professional misconduct did not require behaviour that was disgraceful or dishonourable. It concluded:

> The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

[45] In *Re: Lawyer 12*, 2011 LSBC 11, a hearing panel summarized previous applications of the *Martin* test as follows:

> In my view, the pith and substance of these various decisions displays a consistent application of a clear principle. The focus must be on the circumstances of the Respondent's conduct and whether that conduct falls markedly below the standard expected of its members.

[46] More recently, in *Law Society of BC v. Kim*, 2019 LSBC 43, a hearing panel emphasized that the test for professional misconduct is not subjective:

> The *Martin* test is not a subjective test. A panel must consider the appropriate standard of conduct expected of a lawyer, and then determine if the lawyer falls markedly below that standard. In determining the appropriate standard, a panel must bear in mind the requirements of the *Act*, the Rules and the *Code*, and then consider the duties and obligations that a lawyer owes to a client, to the court, to other lawyers and to the public in the administration of justice. Each case will turn on its particular facts.

Test for conduct unbecoming

[47] At the relevant time, "conduct unbecoming a lawyer" was defined this way in section 1 of the *Act*:

> "conduct unbecoming a lawyer" includes a matter, conduct, or thing that is considered, in the judgment of the benchers, a panel or a review board,
>
> (a) to be contrary to the best interests of the public or of the legal profession, or
>
> (b) to harm the standing of the legal profession;

[48] Section 3 of the *Act* sets out the objects and duty of the Law Society:

> It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers, ...

[49] As noted in *Law Society of BC v. Berge*, 2005 LSBC 28, further guidance on the meaning and application of the words "best interests of the public" are found in the Canons of Legal Ethics (the "Canons"), which has since become section 2.1 of the *Code*.

[50] The introductory paragraphs of the Canons state that they are a "general guide, and not a denial of the existence of other duties equally imperative and of other rights, though not specifically mentioned." They go on to say that a lawyer is:

> a minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession.
>
> In these several capacities, it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

[51] Under the duty to oneself, the Canons state that "all lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity."

[52] Rule 2.2 of the *Code*, entitled "Integrity," is relevant here. Commentaries 2 and 3 to that rule are quoted in paragraph 61 below.

[53] "Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct." Accordingly, a lawyer's conduct should always reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[54] A useful working distinction between "professional misconduct" and "conduct unbecoming" is that professional misconduct refers to conduct occurring in the course of a lawyer's practice while conduct unbecoming refers to conduct in the lawyer's private life.

[55] In *Law Society of BC v. Watt*, 2001 LSBC 16, [2001] LSDD No. 45, a hearing panel explained why lawyers are disciplined for "off-the-job" conduct:

> "Conduct unbecoming a lawyer" is an inclusively-defined term in Section 1(1) of the *Legal Profession Act*, which refers to the conduct being considered in the judgment of the Benchers to be either contrary to the best interest of the public or of the legal profession or to harm the standing of the legal profession. Justice Clancy, of the Supreme Court of British

Columbia, held, in *Re Pierce and the Law Society of British Columbia* (1993) 103 D.L.R. (4th) 233 at 247:

> When considering conduct unbecoming, the Benchers' consideration must, therefore, be limited to the public interest in the conduct or competence of a member of the profession.

The Benchers discipline Members for some "off-the-job" conduct because lawyers hold positions of trust, confidence, and responsibility giving rise to many benefits but imposing obligations not shared with most other citizens … *If a lawyer acts in an improper way, in private or public life, there may be a loss of public confidence in the lawyer, in the legal profession generally, and in the self-regulation of the legal profession if the conduct is not properly penalized in its professional aspect*. It is possible that conduct unbecoming may lead to controversy about the legal profession and lawyers, which may disrupt the proper functioning of lawyers in British Columbia as they relate to clients, interested third parties (such as witnesses, police officers, and service providers), other lawyers (within and without this jurisdiction), the judiciary, the press, and, put generally, anyone who may be expected to rely on lawyers behaving in a dependable, upright way. *The behaviour of lawyers must satisfy the reasonable expectations which the British Columbia public holds of them. By their behaviour, lawyers must maintain the confidence and respect of the public; lawyers must lead by example*. …

[emphasis added]

Applicable *Code* provisions

[56] In addition to the provisions of the *Code* set out above, the following provisions provide guidance in analyzing the Respondent's behaviour in this case.

[57] As noted in the Introduction to the *Code*, "Some issues are dealt with in more than one place in the *Code*, and the *Code* itself is not exhaustive of lawyers' professional conduct obligations. In determining a lawyers' professional obligations, the *Code* must be consulted in its entirety and lawyers should be guided in their conduct equally by the language in the rules, commentary and appendices." While the *Code* is a reliable and instructive guide for lawyers, the obligations it identifies are only the minimum standards of conduct expected of lawyers.

[58] Rule 2.1-2 of the *Code*, which is part of the Canons, considers a lawyer's duty to the courts, and states:

> (a) A lawyer's conduct should at all times be characterized by candour and fairness. ...
>
> (c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law …

[59] Rule 2.1-4 sets out a lawyer's duty to other lawyers, and includes:

> (a) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers that cause delay and promote unseemly wrangling.
>
> (b) A lawyer should neither give nor request an undertaking that cannot be fulfilled …
>
> (c) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests that do not prejudice the rights of the client or the interests of justice.

[60] Rule 2.1-5 sets out the duties lawyers have to themselves:

> (a) A lawyer should assist in maintaining the honour and integrity of the legal profession …
>
> (f) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

[61] Rule 2.2-1 and its commentaries are particularly instructive with respect to integrity:

> A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[62] A lawyer's relationship to the administration of justice is outlined in Chapter 5 of the *Code*. Rule 5.1-1 and its commentaries state:

When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

[1] Role in adversarial proceedings – In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an

> empty formality because, unless order is maintained, rights cannot be protected.
>
> …
>
> [4] In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.
>
> …
>
> [6] When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations in which the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.
>
> …
>
> [8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.
>
> …

[63] Rule 5.1-2 states:

> When acting as an advocate, a lawyer must not:
>
> (a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
>
> …
>
> (e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit,

> suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;
>
> (f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;
>
> (g) knowingly assert as fact that which cannot reasonably be supported by the evidence or taken on judicial notice by the tribunal;
>
> …

[64] Lawyers must act with courtesy. Rule 5.1-5 of the *Code* and its commentary state as follows:

> A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings.
>
> Commentary
>
> [1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

[65] With respect to regulatory compliance, rule 7.1-1 of the *Code* indicates that a lawyer must reply promptly and completely to any communication from the Law Society, and provide documents as required to the Law Society.

[66] Rule 7.2-1 and its commentaries also recognize a lawyer's duty to be courteous and act in good faith:

> A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
>
> Commentary
>
> [1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

> [2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.
>
> [3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.
>
> [4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.
>
> …

The Law Society's review of the evidence

[67] The following facts are set out in the NTA and form the basis of the Law Society's case against the Respondent.

The Respondent's background

[68] The Respondent was called and admitted as a member of the Law Society of British Columbia on September 1, 2004.

[69] The Respondent currently works as a sole practitioner in Burnaby, British Columbia. His practice consists of 65 per cent motor vehicle plaintiff and 35 per cent criminal law.

Background facts: divorce proceedings

[70] In March 2014, the Respondent and his former wife were parties in a family law trial before the Honourable Madam Justice Ross of the Supreme Court of British Columbia.

[71] On July 17, 2014, Justice Ross pronounced a Final Order granting a divorce. The Final Order also included orders related to guardianship, parenting time, child support and property division.

[72] In her Reasons for Judgment, Justice Ross noted:

> I note that whatever the animosity between the parties, Ms. Edwards has consistently endeavoured to facilitate Mr. Edwards' parenting time with his children. Ms. Edwards has respected the orders of the court; on the other hand, Mr. Edwards has consistently disregarded court orders.

[73] Although Justice Ross declined to award special costs to Ms. Edwards, she made the following observation:

> Mr. Edwards' conduct throughout the litigation has been unacceptable. His failure to produce documents alone could warrant an order for special costs. … In addition, Mr. Edwards ignored an order of the court requiring him to pay child support. His lack of cooperation in relation to dealings with the real property resulted in unnecessary interim applications. His conduct most certainly had the effect of driving up the costs to Ms. Edwards and added much unnecessary additional stress to the litigation. However, an award of special costs is a discretionary order. I am concerned that an award of special costs would upset the balance with respect to financial issues. In addition, I have concluded that an award of special costs would be unduly harsh in all of the circumstances. …

Subsequent parenting and child support proceedings

[74] On or about November 4, 2016, the Respondent applied to change the parenting arrangements and for a reduction in child support.

[75] The notice of application dated November 3, 2016 set out that the hearing would take place on April 24, 2017 (the "November Application"). At the time, Ms. Edwards was not represented by counsel.

[76] In an email dated December 2, 2016, the Respondent wrote to Ms. Edwards as follows:

> Provide your list of three (3) preferred mediators from the Roster below-
>
> …

> Will you be self- represented? Or do you plan to hire a lawyer such as [DB], again?? It is my understanding his phone is disconnected.

[77] In an email sent later that same day, the Respondent wrote to Ms. Edwards as follows:

> Be aware that if you fail or refuse to provide us with your list of three (3) mediators by Monday December 5, 2016, at 4pm then we shall consider the advisability of claim against [JH] for assault against a minor without further notice.

[78] JH was Ms. Edwards' new partner. On or about December 23, 2016, the Respondent filed a notice of civil claim against JH. The claim related to an alleged incident in 2013 between JH and a child of the Respondent and Ms. Edward. The Respondent's legal assistant, PC, tried to convince the Respondent not to file the notice of civil claim.

[79] In an email dated January 12, 2017, the Respondent sent PC instructions to file a requisition with respect to the November Application:

> Draft a Requisition to bring forward to February 9, 2017 BY CONSENT
>
> ps. technically I think it is unopposed rather than BY CONSENT because **she is in Default** of a Response but if she has any objection, then she can raise it on the 9th but it would be moot point then because we will already be at court !!

[80] The Respondent copied the January 12, 2017 email to James Vilvang, QC, a senior lawyer in Vancouver. It is unclear why Mr. Vilvang was copied on the email as he was not counsel for the Respondent in any proceedings related to Ms. Edwards.

[81] Approximately 30 minutes later, in an email dated January 12, 2017, Mr. Vilvang replied to the Respondent stating:

> I just looked at your instructions below. I think you should notify [Ms. Edwards] of your intention to file any requisition to change the date. I also think you should immediately notify FMEP of the application and intended change of date.
>
> Have you got an affidavit of service of the application on your wife? I think a court will be reluctant to do anything unless they are fully satisfied that she has been properly notified of both the application and the change of date.

> I would absolutely not file a requisition changing the date "by consent". Clearly, there has been no consent.

[82] The Respondent did not provide the above January 12, 2017 email exchanges to the Law Society when they were initially requested. The emails were ultimately provided by counsel for the Respondent to a Law Society investigator on December 27, 2018.

[83] On January 12, 2017, the Respondent filed a requisition that stated the following:

> Requested to bring forward the matter presently of April 24, 2017 and re-set the application to January 19, 2017, BY CONSENT.

[84] In approximately January 2017, Ms. Edwards retained Dia Montgomery as counsel.

[85] On January 16, 2017, Ms. Montgomery sent the Respondent a letter that stated in part:

> We are in receipt of your Requisition resetting the application to this Thursday. The Requisition you filed indicates consent. That is not the case and we will be informing the court accordingly.

[86] In an email dated January 18, 2017, the Respondent sent a copy of the notice of civil claim against JH to Ms. Montgomery and Ms. Edwards. Ms. Edwards was not a party to that action. At the time, the Respondent had not yet served JH with the notice of civil claim.

[87] On or about January 18, 2017, Ms. Montgomery filed a response to the November Application. Included with the response materials was the eighth affidavit of Ms. Edwards. The affidavit set out a brief history of the events leading up to and following Justice Ross' Final Order, including Justice Ross' assertions that the Respondent "has consistently disregarded court orders," that he "refused to abide by the interim child support order made by Master Muir," and that none of his excuses "amount[ed] to acceptable reasons to disregard the order of the court." Justice Ross found it "remarkable to think that [the Respondent], a practising lawyer, would have believed that they were."

[88] The affidavit also explained that, as a result of the Respondent's failure to pay court-ordered child support arrears, Ms. Edwards enrolled with the Family Maintenance Enforcement Program (the "FMEP") in September 2014.

[89] The hearing of the November Application was to proceed on January 19, 2017. However, it was struck off the list because the Respondent failed to file an application record.

[90] Ultimately, the November Application was heard on January 31, 2017 before the Honourable Mr. Justice Schultes (the "January Hearing").

[91] Following the January Hearing, Justice Schultes made several interim orders (the "January Order"), including that:

(a) the Respondent's application to vary the final order regarding custody made on June 17, 2014 was adjourned generally;

(b) "should the Respondent wish to re-set an application to vary custody of the Children, the Respondent must do so in compliance with the British Columbia Supreme Court Family Rules";

(c) Ms. Edwards' counsel "may perform the calculation of the Respondent's child support arrears as set out in the order for the purposes of determining the Respondent's new amount of child support arrears";

(d) Ms. Edwards was awarded costs of the January 31, 2017 application in the amount of $500 (the "Costs Order") because the Respondent filed a requisition "by consent" when Ms. Edwards had no knowledge of the requisition and had consented to the same; and

(e) the Respondent was required to pay the $500 costs as a precondition to his setting down any further court applications.

[92] In his Reasons for Judgment, Justice Schultes observed the following in relation to the Respondent's conduct during the January Hearing:

> I know how emotions run high in family matters, but you don't want to lose your professional reputation, and people have been disbarred for less.

Payment of the Costs Order to FMEP

[93] In a February 1, 2017 email to Ms. Montgomery, which was copied to Mr. Vilvang, the Respondent stated:

> We have requested a copy of he clerk'e [sic] notes.
>
> We trust your Draft Order will reflect the clerk's notes.

> It is expected that we will provide you a copy of the same in the next few days.
>
> Be aware there was a lawyer in BC Discipline Digest recently who inserted provisions into the draft order which were not actually made in open court, and we would not want to you [sic] fall afoul of that rule inadvertently or otherwise.
>
> Kindly send a courtesy copy of the Draft Order to Mr Jim Vilvang, QC BEFORE you file at the courthouse though you do not need the other side's approval as to form and content on the order itself.

[94] In a second February 1, 2017 email to Ms. Montgomery (copied to Mr. Vilvang), the Respondent set out the arrears he had calculated that he owed Ms. Edwards.

[95] In a third February 1, 2017 email to Ms. Montgomery (copied to Mr. Vilvang), the Respondent forwarded to Ms. Montgomery an email from the Registrar to PC. The email attached a copy of the court summary sheet from the January Hearing. The court summary sheet confirmed:

> Costs for today's application are awarded to the claimant in the fixed amount of $500, payable forthwith as a precondition to the respondent setting down any further applications.

[96] The Respondent read the court summary sheet and was aware of its contents at all material times.

[97] In a fourth February 1, 2017 email to Ms. Montgomery (copied to Mr. Vilvang), the Respondent attached a document containing his arrears calculations.

[98] In a fifth February 1, 2017 email sent to Mr. Vilvang and copied to Ms. Montgomery, the Respondent set out his understanding of the arrears that had been ordered and attached a document with further calculations.

[99] The next day, on February 2, 2017, the Respondent paid $500 to the FMEP by making a payment in cash at a bank.

[100] Approximately 50 minutes later, in an email to Ms. Montgomery (copied to Mr. Vilvang), the Respondent claimed he had paid the Costs Order and attached the FMEP receipt of payment.

[101] In a letter to the Respondent dated February 3, 2017, Ms. Montgomery wrote:

> I write in response to your emails of February 1, 2017 through February 3, 2017.
>
> We will not agree to send the draft order of Mr. Justice Schultes made January 31, 2017 to any uninvolved third party for review. Costs are payable to my client and are not child support. Thus, your $500.00 payment to FMEP is irrelevant to the issue of costs. Costs have not been paid to my client and, should you attempt to bring an application without paying costs, I will bring this to the attention of the court.
>
> Thank you for providing us with the clerk's notes from the January 31, 2017 chambers hearing before Mr. Justice Schultes. Mr. Justice Schultes directed that I calculate arrears. Term 8 of Mr. Justice Schultes' order requires any dispute over the calculated arrears to be referred to the Registrar.

[102] In an email to Ms. Montgomery dated February 3, 2017 (copied to Mr. Vilvang), the Respondent replied "That is nonsense, and bad faith. The amount was paid. I will consider bringing an application before Justice Shultes [sic] again and asking for special costs."

[103] Approximately ten minutes later, the Respondent sent the following in an email to Ms. Montgomery (copied to Mr. Vilvang):

> [The Respondent's assistant]
>
> EDWARDS –
>
> Bring another application. Ask for special cost against [Ms. Edwards] and those costs to be reimbursed and paid by by [sic] her own lawyer directly, in accordance with the *BC Supreme Court Rules*. Obviously [Ms. Edwards'] lawyer does not want us to send the settlement cheque too soon,
>
> until Dia [Ms. Montgomery] can bill more hours in court. It will take another full day [to] argue about the $500 costs and Ms Dia penally, [sic] and thus I assume [Ms. Edwards'] lawyer will try to charge it back to her client in an hourly basis a day.

[104] On February 3, 2017, the Respondent served Ms. Montgomery with a notice of application (the "February Application"), which sought a variation of parenting arrangements.

[105] On February 8, 2017, the Respondent made a written request to appear before Justice Schultes with respect to the payment of the Costs Order, which he also sent to Ms. Montgomery by email.

[106] In his February 8, 2017 written request, the Respondent stated:

(a) in relation to the reason why the application had to be heard by Mr. Justice Schultes:

> On January 31, 2017, after hearing Mr. Edwards Chambers application, Mr. Justice Schultes made an order which included several terms. Term 11 required Mr. Edwards to pay the costs of the January 31, 2017 application to Ms. Edward [sic] in the amount of $500. This amount was to be paid forthwith as a precondition to Mr. Edward [sic] setting down any further applications. Mr. Edwards paid $500 to the Federal [sic] Maintenance Enforcement Program ("FMEP") on February 1, 2017. [The Respondent] seeks an order that this payment to FMEP satisfies payment of the cost award in Term 11.

(b) in relation to the "opponent's position on this request to appear":

> Mr. Edwards specifically asked that the matter be returnable before Mr. Justice Schutes [sic] in his Notice of Application filed February 3, 2017.

[107] On February 9, 2017, Ms. Edwards filed a response to the February Application. The response materials included the ninth affidavit of Ms. Edwards. The response and affidavit set out Ms. Edwards' belief that the Respondent had deliberately paid the $500 costs award to FMEP instead of to Ms. Edwards because he wished to obtain the "double benefit" of paying $500 to reduce his child support arrears while at the same time fulfilling his obligation to pay the award before he could bring further applications before the court.

[108] The response also alleged that the Respondent breached the January Order that he must file and serve applications in accordance with the *British Columbia Supreme Court Family Rules* and that the Respondent did not inquire into Ms. Montgomery's availability before setting the matter down.

[109] Despite the January Order, the Respondent sent numerous emails to Ms. Montgomery with his own recalculations of the arrears he owed. The Respondent also sent Ms. Montgomery an email warning of Law Society discipline should she

deliberately misrepresent the terms of the January Order, which he also sent to Mr. Vilvang.

[110] The response further alleged that, during the chambers application, the Respondent insulted Ms. Montgomery and screamed at her in open court. Ms. Montgomery had to obtain a sheriff escort for the rest of the chambers application.

[111] Lastly, the response alleged that, after Ms. Montgomery wrote to the Respondent to advise that the payment to FMEP did not satisfy the costs award, the Respondent claimed that she was acting "in bad faith" and that he would seek special costs against her personally.

[112] In a letter to Ms. Montgomery dated February 10, 2017, the Respondent provided a cheque for $500 and stated "this payment is herewith sent to you on the undertaking that you not make use of it unless with respect to the order of Justice Schultes of January 31, 2017 of $500.00 costs."

[113] The February Application did not proceed as scheduled on February 14, 2017 because the Respondent failed to file an application record.

[114] In a letter to the Respondent dated February 15, 2017, Ms. Montgomery refused to agree to the undertaking with respect to the cheque for $500.

[115] In an email to the Respondent dated February 22, 2017, Ms. Montgomery stated:

> Pursuant to our last several emails to your office, my client has now instructed me to set a Chambers appearance for March 7, 2017, pursuant to section 221 of the *Family Law Act.* Quite simply, you have failed to provide your availability for Chambers thus far after several attempts on our end to secure your availability. I expect to file and serve all necessary documentation pertaining to this application upon your office by 4:00 p.m. today.
>
> Additionally, I continue to await your response concerning the $500 you provided my office on February 10, 2017. It is our position that this money represents the costs award made against you on January 31, 2017 by Mr. Justice Schultes and is therefore not the subject of an undertaking.
>
> As set out to you previously, I do not agree to an undertaking. Should you wish these funds to be returned to your office on that basis, please let me know by tomorrow, February 23, 2017.

[116] In an email to Ms. Montgomery dated February 22, 2017, the Respondent wrote:

> YES WE ARE PREPARED TO REMOVE THE UNDERTAKING, AND SO THE MONEY IS BEING SENT TO YOU ON THE UNDERSTANDING THAT IT RELATES TO THE COSTS AWARD MADE ON JANUARY 31, 2017 BY MR JUSTICE SCHULTES.

[117] In an email to the Respondent dated February 14, 2017, Ms. Montgomery had requested that the Respondent provide his available dates for a chambers application by 4:00 pm the following day. Between February 15 and 23, 2017, Ms. Montgomery, PC and the Respondent exchanged a number of emails regarding available dates for a chambers application.

[118] On February 22, 2017 the Respondent sent Ms. Montgomery an email asking her to file a requisition by consent to reset the next court date and to set it before Mr. Justice Schultes.

[119] On February 22, 2017 Ms. Montgomery sent an email to court scheduling outlining the parties' available dates and stating "…the Respondent also wishes for this matter to be set before Mr. Justice Schultes as per his email to counsel dated February 22, 2017" (the "February Email").

[120] Ultimately, the matter was set for a one-hour hearing before Mr. Justice Schultes on April 24, 2017.

The section 221 *Family Law Act* proceeding

[121] On March 21, 2017 Ms. Montgomery filed an application pursuant to section 221 of the *Family Law Act* (the "March Application").

[122] Section 221 of the *Family Law Act* allows a court to make an order prohibiting a party from making further applications or continuing a proceeding without leave of the court if it is satisfied that the party: (a) has made an application that is trivial; (b) is conducting a proceeding in a manner that is a misuse of the court process; or (c) is otherwise acting in a manner that frustrates or misuses the court process.

[123] The Respondent has admitted the truth of the facts from the "Factual Basis" section of the March Application, including the facts referred to in paragraphs 79 to 83 above, and that:

(a) the Respondent brought civil proceedings against JH in order to force Ms. Edwards to engage in negotiations to vary the Respondent's child support arrears; and

(b) the Respondent's behaviour in litigation resulted in additional expense and frustration for Ms. Edwards.

Requisition filed March 24, 2017

[124] On March 24, 2017 the Respondent filed another requisition with respect to the part of the November Application that Justice Schultes had adjourned (the "March Requisition"). The March Requisition stated the following:

> Requested in relation to the shared Custody application which had been adjourned from January 31, 2017, generally,
>
> (a) to re-set the matter to April 24, 2017, BY CONSENT.
>
> (b) before Justice Schultes
>
> [emphasis in original]

[125] Neither Ms. Edwards nor Ms. Montgomery had provided any such consent in relation to the March Requisition.

Hearing on April 24, 2017

[126] On April 20, 2017, the Respondent filed a response to the March Application.

[127] In his response, the Respondent acknowledged that he had commenced a civil claim against JH.

[128] The hearing of the March Application commenced on April 24, 2017 (the "April Hearing"). At the April Hearing, Ms. Montgomery made submissions in regards to her client's application pursuant to section 221 of the *Family Law Act*. Chelsea Caldwell, counsel for JH, was present as an observer at the April Hearing.

[129] The Respondent appeared on his own behalf at the April Hearing and was provided with a full and fair opportunity to respond to the March Application at that hearing.

[130] During the April Hearing, the Respondent made the following submissions on whether he misused the court process:

> It's actually, ironically, I would submit, Mrs. Montgomery who is abusing the court process, and she's the one who's using her specialized knowledge of family law in order to try to manipulate the system and

> effectively try to block my children from having access to the justice system, regardless of their best interest.

[131] During the April Hearing, the Respondent also stated the following:

> So when she didn't accept that [the undertaking and costs], it's my respectful submission that she was contemptuous of the court order and it was not in good faith, and she's then received two payments, and that's why I ask for special costs.

[132] Prior to filing either the January or March Requisitions "by consent", Mr. Vilvang had warned the Respondent in January 2017 not to do so if there was no consent. Despite this warning, the Respondent filed both the January Requisition and the March Requisition "by consent" when he knew that he did not have the consent of the other party.

[133] On May 2, 2018 a Law Society investigator interviewed the Respondent. When asked about the filing of the January and March Requisitions, the Respondent stated that he was of the understanding that, if you are going to reset the matter, you can do so unilaterally. During the interview, the following exchange occurred between the investigator and the Respondent:

> CA: Even if someone is outside of the time frame … it's not appropriate to put "by consent" if it's not. Whether or not it's setting a date, that's something you ought to have known and that's one of the concerns of the Law Society. You're a practising lawyer. You don't put "by consent" unless it is. Going forward you have got to be careful about that.
>
> BE: Yeah, I won't do that again. And again, I don't typically set my own dates. I really like to be hands-off about that with my so my legal assistants are doing that.
>
> …
>
> BE: Yeah, and I was talking to even Mr. LaCroix about it, and I'm not sure if he's saying maybe Mr. Schultes [sic] doesn't even—he comes from criminal. Maybe he doesn't understand all of the rules, but it was my understanding, say, in civil rules, I don't know about the family rules, but that if you were going to adjourn you would need the other side's consent or a court order, but if you were going to set or reset you can do that unilaterally.
>
> CA: Well, you can, but you don't put "by consent" on it.

BE: Point taken.

[134] In two instances during the April Hearing, the Respondent accused Ms. Montgomery of playing "keep-away" with the dates for resetting the February Application, and of violating the *Code*. The Respondent did not have a good-faith basis for either allegation.

[135] The Respondent also accused Ms. Montgomery of a "significant abuse of process" and stated "I'm on the end of abuse from Mrs.--- from Ms. Montgomery." The Respondent did not have a good-faith basis for his accusations.

[136] The April Hearing was adjourned generally to allow the parties to file additional materials.

[137] Following the April Hearing, on April 28, 2017, Ms. Montgomery filed an affidavit sworn by Ms. Caldwell, counsel for JH. Ms. Caldwell swore that, during the April Hearing, the Respondent told the court that Ms. Montgomery was "contemptuous of the order of Mr. Justice Schultes" and that she was "a liar." He also stated that Ms. Montgomery's actions would give rise to Law Society proceedings and that Ms. Montgomery had submitted or was relying on a false affidavit.

[138] Ms. Caldwell also swore that, on January 31, 2017, she was in chambers on another matter when the Respondent loudly accused Ms. Montgomery of working to keep him away from his sons. The Respondent demanded that she consult with him, and despite Ms. Montgomery declining to leave chambers, he continued to loudly demand that she speak with him. The Respondent was visibly agitated and aggressive, and did not desist until both Ms. Caldwell and Ms. Montgomery told him to leave.

Hearing on May 23, 2017

[139] The April Hearing was continued on May 23, 2017. The Respondent was provided with the opportunity to make full submissions on the continuation date.

[140] Prior to the continuation date, on April 20, 2017, the Respondent filed an affidavit. The Respondent attached as Exhibit "C" to his affidavit one email from the Respondent to Ms. Montgomery relating to his available dates for a hearing, despite the Respondent having received other emails from Ms. Montgomery with respect to setting the March Application. The Respondent implied that Ms. Montgomery had deliberately filed a separate application in order to supersede the Respondent's application to vary custody or parenting time.

Justice Schultes' decision regarding the March Application

[141] On June 23, 2017 the Respondent again appeared on his own behalf before Justice Schultes (the "June Hearing"). Ms. Montgomery appeared for Ms. Edwards.

[142] With respect to the Respondent's assertion at paragraph 112 above, at the June Hearing, Ms. Montgomery clarified to the court that her contact with the Respondent related to her section 221 application and that she did not think that the Respondent expected her to set down his separate application.

[143] In relation to this issue, the following exchange occurred between Justice Schultes and the Respondent:

> Justice Schultes: Mr. Edwards, again, you don't have to, but if you want to say anything about that -- it's not something that you brought to my attention in your submissions, but I'm treating you, for family law purposes, the way I would treat a self-represented person, which is if I come up with something that I think a lawyer might have argued, I bring it to counsel's attention.
>
> And as far as affidavit's concerned, in my view this is something that Ms. Montgomery could reply to as counsel, since it deals with her conduct of the matter as counsel. So in the same way, you're representing yourself, so you're entitled to say whatever you want to say about it. And if you need to look at the point, you can.
>
> Respondent: No, thank you. I have no further submission.

[144] Justice Schultes then delivered his Reasons with respect to the March Application. The Reasons are *prima facie* proof of the facts contained therein.

[145] In his Reasons, Justice Schultes determined that the Respondent had acted in a manner that frustrated or misused the court process based on findings of fact, including the following:

(a) Ms. Edwards did not provide any consent to the January Requisition filed by the Respondent [para. 11];

(b) there was no basis on which the Respondent could have reasonably believed that the March Requisition was filed with Ms. Edwards' consent [para. 46];

(c) there was no substance to the statements made by the Respondent with respect to Ms. Montgomery and the setting of dates for the March Application [para. 47];

(d) the Respondent's initial payment of $500 to FMEP was done to "skirt the clear terms of my order and to secure for himself the credit towards child support arrears, instead of complying directly with the order's obvious meaning" of the Costs Order [para. 49];

(e) the Respondent's request for an undertaking from Ms. Montgomery with respect to the Costs Order was completely unnecessary [para. 50];

(f) the Respondent's email to his assistant on February 3, 2017 suggests that he was hoping to cause Ms. Edwards to expend more in legal fees than the Costs Order [para. 50];

(g) the Respondent used the court process as a means of harassing and intimidating Ms. Edwards [para. 51];

(h) the December Email with a demand for mediation and threat of a lawsuit against JH was done solely to force Ms. Edwards to mediate a reduction in his arrears and filed to increase the pressure on Ms. Edwards [para. 52];

(i) The Respondent "sees the institution of dubious but highly prejudicial legal proceedings against third parties as a legitimate tactic to further his positon in the family law proceedings" [para. 52];

(j) the Respondent "…has no regard for proper use of court procedures" because he filed two requisitions which were falsely stated to be by consent [para. 53]; and

(k) the Respondent's actions in response to the Costs Order were done "in a manner calculated to frustrate Ms. Edwards and her counsel and to increase her litigation costs" [para. 54].

[146] Justice Schultes also ordered that the Respondent be prohibited from making further applications or continuing with any proceeding for four years without leave of the Court and awarded special costs against the Respondent.

[147] In awarding special costs, Justice Schultes stated:

> With respect to the request for special costs, I am satisfied that Mr. Edwards's conduct of this application is particularly deserving of rebuke.

> He has cast serious aspersions on the professional integrity of Ms. Edwards's counsel with no evidence to support those most serious claims. He of all people, in his own professional capacity, should understand the serious harm that can result from baseless allegations of misconduct directed at opposing counsel in family litigation.
>
> He narrowly escaped being ordered to pay special costs in the trial before Ross J., but sadly seems to have learned nothing from that experience. I consider an award of special costs against him necessary to reflect the court's severe condemnation of this behaviour. To ensure that he complies with the order, I add the further term that he may not seek leave pursuant to the s. 221 order to make an application or continue a proceeding until the special costs have been paid.

Deemed admissions

[148] The Respondent has admitted that Justice Schultes found that the Respondent, in or between November 2016 and June 2017, in the course of representing himself in matrimonial proceedings in the Supreme Court, acted in a manner that frustrated or misused the court process, including by:

(a) paying costs to the Family Maintenance and Enforcement Program rather than to the opposing party or her counsel:

(i) contrary to the terms of the January 31, 2017 costs order;

(ii) to frustrate the opposing party; and

(iii) to increase the cost of litigation for the opposing party;

(b) drafting and forwarding a memo to the opposing party, in which he stated his intention to bring another application which he believed would result in the opposing party having to pay her lawyer more in fees than the sum of the January 31, 2017 costs order;

(c) filing two requisitions which were purportedly by consent, in circumstances where he knew or ought to have known that no such consent had been provided;

(d) threatening and instituting legal proceedings for an improper purpose; and

(e) using the court process as a means of harassing and intimidating the opposing party.

The Respondent's review of the evidence pertaining to paragraph 1(a) of the Citation

[149] In his submissions, the Respondent provided a summary of the facts he determined pertinent to paragraph 1(a) of the Citation as follows:

(a) On November 4, 2016, he filed an application for a change in parenting arrangements and reduction in child support.

(b) On January 31, 2017, following a hearing on that application, Mr. Justice Schultes ordered that he pay costs in the amount of $500.

(c) On February 2, 2017, he paid $500 to the Family Maintenance Enforcement Program ("FMEP").

(d) On February 2, 2017, he notified Ms. Edwards' counsel, Ms. Montgomery, that he made the February 2, 2017 payment to FMEP as payment of the January 31, 2017 Costs Order.

(e) As of that date, arrears of support were approximately $76,000.

(f) On February 3, 2017, Ms. Montgomery wrote to him stating the February 2, 2017 payment did not satisfy the costs award.

(g) On February 3, 2017, Mr. Vilvang wrote to Ms. Montgomery and FMEP stating:

> Mr. Edwards has advised me that he paid $500 representing costs in the application to vary arrears and maintenance to FMEP yesterday. Mr. Edwards understands that this sum is not to be applied to the arrears of maintenance and he has asked me to assist in making that absolutely clear to everyone involved as well.
>
> FMEP is free to pay that sum out to Mrs. Edwards or her counsel as deemed appropriate by FMEP. It is understood that the arrears of maintenance will be calculated independently.
>
> If anyone has any concerns, please notify me.

(h) On February 10, 2017, he paid a further $500 as payment of the January 31, 2017 Costs Order.

(i) In his Reasons dated June 23, 2017, Mr. Justice Schultes made the following findings in respect of the February 2, 2017 payment to FMEP:

> I am satisfied that his initial payment was meant to skirt the clear terms of my order and to secure for himself the credit towards child support arrears, instead of complying directly with the order's obvious meaning.
>
> …
>
> Finally, I conclude that he has responded to my previous costs orders in a manner calculated to frustrate Ms. Edwards and her counsel and to increase her litigation costs.

Application of the facts to the law

[150] The Law Society submits that the Respondent's conduct amounts to a marked departure from that conduct the Law Society expects of lawyers. A finding from the Supreme Court of British Columbia that a lawyer, representing himself, acted in a manner that frustrated or misused the court process harms the standing of the legal profession in the eyes of the public.

[151] Although the Respondent was a party in a personal action before the court, the Law Society seeks a finding of professional misconduct instead of conduct unbecoming the profession because the Respondent engaged in the misconduct in his capacity as a lawyer.

[152] The Law Society says that the following conduct demonstrates that the Respondent engaged in professional misconduct:

(a) filing two requisitions "by consent" when the Respondent knew that he did not have the consent of the opposing party;

(b) paying costs directly to FMEP instead of to Ms. Edwards, contrary to the terms of a court order and in order to frustrate the opposing party and to increase the cost of litigation for the opposing party. Justice Schultes found that this was done to "skirt the clear terms" of the previous costs award;

(c) as demonstrated by his February 3, 2017 "memo to file", attempting to increase the legal fees for Ms. Edwards, such that she would have to pay her lawyer more in fees than the sum of the costs order;

(d) in an email to Ms. Edwards dated December 2, 2016, demanding mediation and improperly threatening a lawsuit against JH, which the Respondent subsequently instituted. Justice Schultes found the suit to be

"dubious" and highly prejudicial. The timing of the suit was suspicious, as it related to an alleged incident in 2013, and was filed at a time when the Respondent was seeking a change to his parenting rights;

(e) yelling at and speaking with opposing counsel in court in a confrontational manner, such that opposing counsel had to obtain the assistance of a sheriff;

(f) casting aspersions on the integrity of opposing counsel before the court with no evidence to support his serious claims. The Respondent:

(i) alleged that opposing counsel had played "keep away" with her dates and had behaved improperly by setting down her application. Justice Schultes found that there was no substance to this allegation;

(ii) submitted that opposing counsel was abusing the court and trying to manipulate the system;

(iii) submitted that opposing counsel was a liar and that she had filed a misleading affidavit;

(iv) submitted that opposing counsel was in contempt of a court order and that she had failed to act in good faith regarding the payment to FMEP; and

(g) although the Respondent did not directly threaten to report opposing counsel to the Law Society, he improperly submitted to the court that her conduct would be a matter for the Law Society.

[153] The Law Society argues that there are several aggravating factors in this case. The first is that, although Justice Ross in 2014 warned the Respondent that his conduct, including his disregard of court orders, was "unacceptable," he continued to act in the same vein. If the Respondent was blind to the impropriety of his conduct before, he ought to have known of it after his judicial admonition.

[154] With respect to the filing of a claim against JH, Ms. Edwards' new partner, it is an aggravating circumstance that the Respondent sent a copy of the claim to Ms. Edwards (who was not a party to the action) before it was filed and served on JH. The Law Society submits that this fact supports Justice Schultes' view that the Respondent filed the claim for "dubious" reasons. It is also of note that the Respondent filed the claim despite his legal assistant's advice not to do so.

[155] The Law Society submits that it is also an aggravating factor that the Respondent continued to copy Mr. Vilvang on correspondence with Ms. Edwards and her counsel. Mr. Vilvang was not counsel on record, and the extent of his involvement with the Respondent's family matter was unclear to Ms. Edwards and Ms. Montgomery. As there is a higher expectation of privacy in relation to family law matters, the Respondent should not have been copying an unrelated third party on confidential and/or privileged communications.

[156] However, despite this concern, it is also an aggravating circumstance that the Respondent filed two requisitions "by consent" when he was told by Mr. Vilvang not to file a requisition "by consent" when there clearly was none.

[157] A further aggravating circumstance is said to be that, during the course of the Law Society investigation, the Respondent failed to provide information as requested. For example, he did not provide the Law Society with the January 12, 2017 emails between himself and Mr. Vilvang. These were provided to the Law Society in December 2018 by counsel for the Respondent. Lawyers have a duty to their regulator to provide all requested information promptly.

[158] In making the January Order, the court cautioned the Respondent about his approach to the case and warned him about the potential effect of his manner on his professional reputation, as well as possible disciplinary consequences. It is an aggravating factor that, in addition to Justice Ross' warning, Justice Schultes' warning had no effect on the Respondent.

[159] The Law Society argues that there are several aggravating aspects of the Respondent's treatment of Ms. Montgomery. The tone of his communications was discourteous and uncivil. At least twice, the Respondent accused Ms. Montgomery of acting in bad faith and indicated that he would seek special costs against her personally. He also accused Ms. Montgomery of acting unprofessionally by attempting to bill more hours on the file and insulted and screamed at her in open court. He asked for an undertaking from Ms. Montgomery when an undertaking was completely unnecessary. At the April Hearing, the Respondent made numerous ill-considered comments about Ms. Montgomery, including that she had abused the court process and used her "specialized knowledge of family law in order to try to manipulate the system" contrary to the best interests of his children. Some of his attacks were personal, including his assertion that she was a "liar". These allegations were baseless and highly inflammatory and fall well below the level of conduct expected of lawyers in dealing with professional colleagues. As noted by Justice Schultes, the Respondent "cast serious aspersions on the

professional integrity of Ms. Edwards' counsel with no evidence to support those most serious claims."

[160] The Law Society also advances an aggravating factor in that, during the course of an interview with a Law Society investigator, the Respondent continued in his course of conduct by attempting to deflect blame for his own actions by questioning Justice Schultes' understanding of the civil rules.

[161] The Respondent's conduct is said to have resulted in harm to several parties. Ms. Edwards had to bear the additional costs of the section 221 application, and she experienced significant stress in relation to his antics. There is some evidence that his actions had a detrimental effect on his children. The outline of the Respondent's conduct in a published decision has harmed the reputation of the legal profession as well as the administration of justice. He harmed his own professional reputation as his conduct was such that knowledge of it would likely impair a client's trust in him, as well as the regard of his professional peers.

[162] Lastly, the Law Society argues that the Respondent failed in his duties to himself. As a member of an ancient and respectable profession, the Respondent should have acted in a manner that maintained his own honour as well as the honour of the legal profession. He failed in all respects to adhere to the virtues of probity, integrity, honesty and dignity. While emotions can run high in family litigation, as a lawyer, the Respondent had a duty to keep those emotions in check and act with decorum and courtesy.

[163] In response, the Respondent's arguments focus on his denial that his payment of $500 to the FEMP constitutes unprofessional behaviour at all and that his conduct as a self-represented litigant in his own family law proceedings constitutes conduct unbecoming, rather than professional misconduct.

[164] The Law Society has the burden of proving that the Respondent made the February 2, 2017 payment to FMEP to frustrate or misuse the court process, on the basis of one or more of the specific grounds alleged in allegation 1(a).

[165] The Respondent acknowledges Mr. Justice Schultes' findings are *prima facie* proof of those facts.

[166] The Respondent is, however, permitted to lead or refer to fresh *or* compelling evidence to contradict or lessen the weight given to those findings by the hearing panel. In *Perrick*, the hearing panel explained at paras. 13 to 15 and 22 to 23:

In our view, the Hearing Panel is entitled, at a minimum, to treat the findings of fact made against the Respondent in the Allan Reasons as *prima facie* truth of those facts.

Once the judicial decision is admitted into evidence, it is then up to the Panel to assess the weight to be given to the Judge's findings and conclusions, having regard to the identity of the participants, the similarity of the issues, the nature of the earlier proceedings and the opportunity of the prejudiced party to contest it.

Notwithstanding the evidence is admissible, the Respondent will have an opportunity to lead fresh or compelling evidence to contradict or lessen the weight given to it by the Hearing Panel. However, the Respondent is not entitled to re-litigate.

…

In *Law Society of Upper Canada v. Coady*, 2009 ONLSHP 0051, where the hearing panel relied on the reasons for judgment in making its finding of misconduct, noted:

> [11] … Much of the evidence introduced by the Society is the record of proceedings in the Ontario Court … Clear and unequivocal findings of fact are found in many of these documents. Given that these findings have been made by judges of the Superior Court of Justice after full and exhaustive consideration of the evidence before them, and given that their findings and conclusions have for the most part been upheld by the Divisional Court or the Court of Appeal for Ontario, we consider them in this proceeding to be compelling evidence of Coady's conduct. *In our view, in the absence of new or compelling evidence that was not considered by the judges in those judicial proceedings, we should not make different findings from those made by the justices of the Superior Court, confirmed on appeal*. To do so would be to permit a collateral attack against those findings and would result in an abuse of process.

We adopt the comments made by the hearing panel in *Coady.*

[emphasis added]

[167] The Hearing Panel is asked to draw the inference that Mr. Vilvang would not have written to Ms. Montgomery unless there was, in fact, a misunderstanding regarding the February 2, 2017 payment. The Respondent submits that is the only reasonable inference to draw from these circumstances. He submits Mr. Vilvang's correspondence is compelling evidence that he did not intend to frustrate or misuse the court process by making the payment to the FMEP.

[168] The Respondent submits that his conduct as a self-represented litigant in his own family law proceedings constitutes conduct unbecoming, not professional misconduct.

[169] He submits that a "useful working definition" of conduct unbecoming is:

> In *Law Society of BC v. Larraker*, 2011 LSBC 29, the Benchers adopted the "useful working distinction" set out in the 2001 decision of *Law Society of BC v. Watt*, stating (at para. 29):
>
> > In this case the Benchers are dealing with conduct unbecoming a Member of the Law Society of British Columbia. We adopt, as a useful working distinction, that professional misconduct refers to conduct occurring in the course of a lawyer's practice while conduct unbecoming refers to conduct in the lawyer's private life.
>
> *Law Society of BC v. Lim*, 2019 LSBC 19, at para. 74

[170] The Respondent submits that the following discipline cases concerning lawyers acting as self-represented litigants are instructive as to this distinction.

[171] In *Law Society of BC v. Lessing*, 2012 LSBC 19, (*Lessing 2012*)the respondent was disciplined for breaching three court orders made against him in family law proceedings where he was self-represented. He was found in contempt of court

[172] Both the Law Society and the respondent took the position in *Lessing* that the conduct constituted conduct unbecoming, not professional misconduct. The hearing panel stated at paras. 69 to 72:

> The Benchers, in a review of a decision of the hearing panel in *Law Society of BC v. Berge*, 2007 LSBC 07, stated the following test for what constitutes conduct unbecoming a lawyer at paragraph [38]:
>
> > The Benchers find that lawyers in their private lives must live up to a high standard of conduct. *A lawyer does not get to leave his or her status as a lawyer at the office door when he or she leaves at*

> *the end of the day. The imposition of this high standard of social responsibility, with the consequent intrusion into the lawyer's private life, is the price that lawyers pay for the privilege of membership in a self-governing profession*. Conduct unbecoming not only includes the obvious examples of criminal conduct and dishonesty, but it also includes "any act of any member that will seriously compromise the body of the profession in the public estimation." See *Hands v. Law Society of Upper Canada* (1889), 16 OR 625.
>
> *The Law Society submits that the failure of the Respondent to comply with the three court orders does not constitute professional misconduct because the orders were made in the Matrimonial Proceedings, in which the Respondent was a party.*
>
> The Law Society also submits that the *breach of the three court orders for which Mr. Justice Davies found him to be in contempt of court constitutes conduct unbecoming a lawyer.*
>
> The Respondent, through his counsel, agreed with the submissions made by the Law Society.
>
> [emphasis added]

[173] On review, *Law Society of BC v. Lessing*, 2013 LSBC 29, the review panel affirmed that the respondent's conduct constituted conduct unbecoming at para. 4:

> Secondly, the Respondent breached three court orders made against him in a matrimonial dispute in which he represented himself. At one point, he was found in contempt of court, though later he was able to purge the contempt. *The Law Society cannot tolerate lawyers breaching court orders and being found in contempt of court. This is conduct unbecoming a lawyer*. Again, the Respondent does not contest this finding.
>
> [emphasis added]

[174] The Respondent's conduct as a self-represented litigant is argued to be analogous to the conduct in *Lessing* that was found to constitute conduct unbecoming. Both cases involve a lawyer acting as a self-represented litigant in their own family law proceedings. Both cases involve adverse findings regarding the lawyer's conduct in those proceedings. Both cases involve a lawyer as self-represented litigant in the context of their private life.

[175] In contrast, in *Law Society of BC v. Lang*, 2014 LSBC 35, the respondent was self-represented in a review of her account under the *Act.* At that hearing, the respondent had settlement discussions with the opposing party, in the absence of his counsel, knowing the opposing party was represented by counsel and without counsel's consent. The respondent was disciplined for this conduct.

[176] An issue arose as to whether the conduct constituted professional misconduct or conduct unbecoming.

[177] The hearing panel found the respondent's conduct related directly to her practice as a lawyer, despite being self-represented at the review, and necessarily constituted professional misconduct. The hearing panel stated at paras. 9 to 12:

> The Law Society asks us to find that the breach of the *Code* in these circumstances amounts to professional misconduct. The Law Society asks us to infer from the evidence that the contact with AB was of a planned and deliberate nature.
>
> Counsel for the Respondent asks us first to look at the Respondent as a "party" to the proceeding and thus not acting as a lawyer in that proceeding. This argument could be described as the "professional misconduct versus conduct unbecoming" argument. His second argument asks us to dismiss the citation on the basis that the misconduct does not reach the threshold of professional misconduct required to be proven by the Law Society.
>
> Was the conduct of the Respondent in contacting and negotiating with a client represented by a lawyer, professional misconduct in these circumstances? Or was it conduct unbecoming a member of the profession?
>
> The Panel finds that *the Respondent's actions related directly to her practice as a lawyer, despite her role as a party in the review of her account, and accordingly a finding of "conduct unbecoming" is not an available option.*
>
> [emphasis added]

[178] The Respondent suggests that *Lang* is distinguishable. In *Lang*, the respondent was self-represented at a hearing in relation to the review of an account rendered in her practice. The litigation where she was self-represented was in relation to her practice. The litigation was not in relation to her private life.

[179] Accordingly, the Respondent submits that both the "working definition" of conduct unbecoming and *Lessing* are dispositive of this issue. The conduct in question can only be characterized as conduct unbecoming.

DECISION

Allegation 1(a) of the Citation

[180] In assessing the Respondent's decision-making and his behaviour, this Panel is required to consider the import of the Respondent's training and professional experience a lawyer and a litigator. We note that his impugned conduct occurred while he was engaged in his capacity as a lawyer and in the context of legal proceedings.

[181] We cannot ignore the findings of the court that the diversion of the $500 in costs awarded to the Respondent's spouse to the FMEP was done to skirt the terms of the previous costs award. Accordingly, the Respondent's actions were not the conduct of a party who was ignorant of the meaning and purpose of an award of court costs.

[182] Further, we cannot escape the conclusion that the diversion of the money was intended to gain an advantage for himself by appearing to satisfy the costs award and to obtain a credit towards the outstanding payments of support meant to assist his family members.

[183] We must decide whether the Respondent's conduct in this aspect of these proceedings constitutes conduct unbecoming a lawyer or professional misconduct. Does his behaviour amount to a marked departure from that conduct that the Law Society expects of lawyers? We conclude that it does.

[184] To use the phraseology of counsel for the Law Society, a finding from the Supreme Court of British Columbia that a lawyer, representing himself, acted in a manner that frustrated or misused the court process harms the standing of the legal profession in the eyes of the public.

[185] This is particularly so when the evidence discloses that the diversion of the $500 was not a discrete course of action. It was part of a strategy to frustrate the Respondent's estranged spouse, misuse a court order and increase the cost of litigation for the opposing party.

[186] We accept that the distinction between "professional misconduct" and "conduct unbecoming" is that professional misconduct refers to conduct occurring in the course of a lawyer's practice while conduct unbecoming refers to conduct in the

lawyer's private life. For the reasons set out above, the Respondent's behaviour crosses the boundary between his activities as a practising lawyer and as a private citizen. We agree that his copying of his correspondence with his spouse and her counsel to another lawyer who was not counsel of record unnecessarily involved a breach of privacy and the publication of confidential and/or privileged communications.

[187] With regard to Mr. Vilvang's intervention to achieve the proper disposition of the $500 costs award, his letter to counsel for the Respondent's spouse of February 3, 2017 was in response to correspondence from counsel for the Respondent's spouse dated February 2, 2017 in which that counsel disputed that the February 2, 2017 payment to FMEP satisfied the Costs Order. While the time line of these events is tight, Mr. Vilvang's efforts to correct the situation were, in truth, damage control. The improper scheme of the Respondent is evident from his original intent and is not remediated by the steps initiated by Mr. Vilvang.

[188] The Panel is aware of the decision of the hearing panel in *Lessing 2012*, where the respondent was a family law practitioner who failed to abide by a number of court orders pertaining to matrimonial proceedings in which he represented himself. Following a joint submission by counsel for both the respondent and the Law Society, the hearing panel found the respondent to have engaged in conduct unbecoming of a lawyer. We distinguish this case because the respondent in *Lessing* did not attempt to misuse or skirt the court orders by manipulation of related proceedings.

[189] We find the facts and outcome in the *Lang* decision to be more applicable to the situation before us. There, the lawyer was self-represented in a matter involving her own professional fees. The line between her personal and professional interests was indistinct, much as in this matter. The panel in *Lang* declined to treat the respondent there as simply a party to the proceeding. Her actions related directly to her practice as a lawyer. Likewise, the Respondent before us used his skills and experience as counsel to advance his personal interests as a party.

[190] Accordingly, this Panel finds that the conduct referred to in paragraph 1(a) of the Citation constitutes a marked departure from that conduct that the Law Society expects of lawyers and is professional misconduct.

Allegations 1(b), (c), (d) and (e) of the Citation

[191] The Respondent admits the conduct described in allegations 1(b), (c), (d) and (e) of the Citation but argues that the behaviour involved constitutes conduct unbecoming of a lawyer, rather than professional misconduct.

[192] As noted above, it is difficult to separate the factual background pertaining to the allegations into distinct acts or omissions. The events giving rise to the Citation occurred within a discrete period of time and formed a strategic program of harassment. The Respondent was warned on separate occasions by two Justices of the Supreme Court of British Columbia that his behaviour was improper and likely to impugn his reputation.

[193] The evidence before the Panel makes is abundantly clear that the Respondent filed two requisitions "by consent" when the Respondent knew he did not have the consent of opposing counsel and when he had been advised by another counsel not to do so.

[194] The memo to file of February 3, 2017 tendered in evidence at the Hearing is clear evidence of the Respondent's intent to pursue a course of action that would drive up his former spouse's legal fees beyond the amount of costs that he had been ordered to pay his spouse.

[195] The Respondent commenced a separate proceeding against a third party, which was found to be "dubious" and highly prejudicial. The timing of the suit was suspicious, as it related to an alleged incident in 2013 and was filed at a time when the Respondent was seeking a change to his parenting rights.

[196] These actions were not taken negligently. They were not taken in ignorance of their impact on the matrimonial proceedings. They were implemented contrary to advice received from sage individuals. They went beyond errors in judgment or neglect.

[197] When all of the evidence is drawn together, the only conclusion in this matter is that the Respondent utilized his legal expertise to bring improper pressure to bear on his opponents in legal proceedings. He would have been unable to pursue such a course had he not been a lawyer with significant court experience.

[198] As with the determination of allegation 1(a) of the Citation, this Panel finds that the proven allegations in allegations 1(b), (c), (d) and (e) of that same Citation involve a marked departure from that conduct that the Law Society expects of lawyers and constitute professional misconduct.

ORDERS

[199] The Law Society has the right to override a lawyer's duty to keep client confidentiality and to maintain solicitor-client privilege by compelling lawyers to produce confidential and privileged information to the Law Society during its

investigation and hearing processes. Sections 87 and 88 of the Act compel disclosure to the Law Society. Those provisions also protect confidential and privileged information in the possession of the Law Society from disclosure.

[200] Rule 5-9(1) allows any person to obtain a transcript of a Law Society hearing. Rule 5-9(2) allows any person to obtain a copy of an exhibit that was tendered in a Law Society hearing that was open to the public, subject to solicitor-client privilege. Rule 5-9 is subject to any orders made under Rule 5-8(2).

[201] Under Rule 5-8(2), all confidential or privileged information is excluded from disclosure to the public. If a member of the public requests copies of the exhibits or transcripts in these proceedings, those exhibits and transcripts should be redacted for confidential or privileged information before being provided to the public.

[202] This Hearing Panel orders, under Rule 5-8(2), that:

1. portions of the transcript and the exhibits that contain confidential client information or privileged information not be disclosed to members of the public; and

2. if any person other than a party seeks to obtain a copy of the transcripts or any exhibit filed in these proceedings, any confidential information or information protected by solicitor-client privilege be redacted from the transcripts or exhibit before it is disclosed to that person.